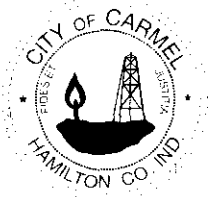


ORIGINAL



City of Carmel

September 7, 1999

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Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: *Ex Parte Filing* in cases WT 99-217; CC 96-98

Dear Chairman Kennard:

Please do not adopt the rule proposed in these cases allowing any telephone company to serve any tenant of a building and to place their antenna on the building roof.

In some states, seventy (70) or more new telephone companies have been certificated to provide service. Add in the wireless telephone companies and under your rule, you may have one hundred (100) companies allowed to place their wires in a building and their antennas on the roof - all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights - a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for one hundred (100) telephone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction which, under Federalism and the Tenth Amendment, you may not preempt. For example, building codes are imposed, in part, for engineering-related safety reasons. These vary by region, weather patterns and building type - such as the likelihood of earthquakes, hurricanes, snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns - which we do every day, with success. Everyone wants garbage picked up, no one wants a transfer station. Everyone wants electricity, no one wants a substation near their home.

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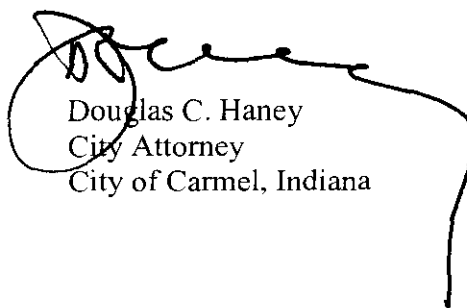
Chairman William Kennard
September 7, 1999
Page Two

The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, municipality to municipality and even within municipalities. We have successfully applied these principles and balanced competing concerns for many years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude for a brand-new technology (wireless fixed telephones) with a minuscule track record, that there are problems on such a massive scale within the 38,000 units of local government located in the United States so as to warrant Federal action.

On rights-of-way issues, local management is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in this area. We believe that the telephone providers' complaints about rights-of-way management and fees are overblown, as shown by the small number of court cases on this - - - only about a dozen nationwide in the last three years. With 38,000 municipalities nationwide and thousands of telephone companies, this small number of cases indicates that the system is working, not that it is broken. Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new telephone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For all of these reasons, please reject the proposed rule and take no action on rights-of-way and taxes.

Very truly yours,



Douglas C. Haney
City Attorney
City of Carmel, Indiana

DCH/eb

cc:

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Office of The Chairman

Date: 9.23.99

To:

- | | |
|---|---|
| <input type="checkbox"/> Common Carrier Bureau | <input type="checkbox"/> General Counsel |
| <input type="checkbox"/> Wireless Telecomm. Bureau | <input type="checkbox"/> Inspector General |
| <input type="checkbox"/> Mass Media Bureau | <input type="checkbox"/> Managing Director |
| <input type="checkbox"/> Compliance & Info. Bureau | <input type="checkbox"/> Secretary |
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From: DCH

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Remarks:

